DATUK BANDAR, KUALA LUMPUR v. HAWTHORNDEN RUBBER ESTATE BHD.

[S.C. (Wan Suleiman, Hashim Yeop A. Sani & Wan Hamzah S.C.JJ.) 27 March 1987 & 11 March 1988]

[Kuala Lumpur – Supreme Court Civil Appeal No. 366 of 1986]

Revenue Law – Payment of rates – Annual value – Agricultural land – Whether occupied – Whether built upon – Local Government Act 1976, s. 2.

Local Government – Payment of rates – Annual value – Agricultural land – Whether occupied – Whether built upon – Local Government Act 1976, s. 2.

In this case, the respondent company is the owner of a rubber estate in the Federal Territory. The appellant took the view that the whole estate is partially built upon and partly occupied, as only part of the area has been used to construct buildings, consisting of staff bungalows, labour lines and factories. The appellant therefore valued the lots on the basis of 10% of the open market value thereof and fixed the annual value of $2,980,000. The respondent appealed to the High Court which ordered the amount to be reduced to $353,882, which is the estimated gross annual rent. The appellant appealed.

Held, dismissing the appeal: (1) every one of the lots comprising the estate in this case is fully occupied since it is agricultural land planted with rubber and used by the respondent company for rubber tapping with exclusive possession. As such, it is not vacant land;

(2) since the whole estate is a fully occupied estate and not vacant, therefore the proviso (c)(i) in the definition of "annual value" in section 2 of the Local Government Act 1976 does not apply and the rates should be fixed on the basis of the estimated annual value.

Case referred to:

(1) *Datuk Bandar, Kuala Lumpur* v. *Bukit Jalil Estates Sdn. Bhd.* [1988] 1 M.L.J. 179 (folld).

SUPREME COURT.

C.V. Das (*Ahmad Ghazali* with him) for the appellant.

Robert A. Lazar for the respondent.

Cur. Adv. Vult.

Wan Hamzah S.C.J. (delivering the judgment of the court): The respondent company is the owner of the Hawthornden Rubber Estate which consists of land lots No. 1802, 2120, 3809, 3958, 3960 and 4066 in the Mukim of Setapak and lots No. 22, 211, 528, 1015 and 1145 in the Mukim of Ulu Klang. The estate is situated in the Federal Territory of Kuala Lumpur. According to the affidavit filed on behalf of the appellant, the estate is about 1,868 acres in area but only 12 acres have been used to construct buildings thereon, consisting of staff bungalows, labour lines and factories. Most of these buildings are situated on lot No. 3958 which is the biggest lot – about 1,115 acres in area. For this reason, the appellant took the view that the whole estate is partially built upon and partially occupied. For the purpose of fixing rates, the appellant took all the lots together and valued them jointly on the basis of ten per centum of the open market value thereof. This was done purportedly in exercise of discretion given in proviso (c)(i) in the definition of "annual value" contained in section 2 of the Local Government Act 1976. Accordingly, the appellant fixed the annual value at $2,980,000. After hearing the respondent company's appeal, the High Court ordered that the amount be substituted with $353,882 which is the estimated gross annual rent. The appellant now appeals to us against the High Court's decision.

According to the affidavits filed on behalf of the respondent company, it employs a labour force of about 180 persons to work in the estate, the majority of whom live on the estate in quarters provided for them, and the estate is managed by a manager and four other members of the staff, all of whom live on the estate. The respondent company derives a fairly substantial income annually from the estate. Replanting of the estate was done during a period of time till 1973. Now the estate is planted with rubber trees of high yielding varieties which are tapped. All of these facts are not disputed by the appellant. It is not disputed by the appellant that the lots are not zoned under the comprehensive development plans. It is also not disputed that the lots are agricultural land. But the appellant took the view that all of these facts are not relevant. On the other hand, the respondent company contends that on the facts of the case every one of the lots should be taken as fully occupied and that the proviso (c)(i) is not applicable.

We heard this appeal together with Civil Appeal No. 365 of 1986 (*Datuk Bandar, Kuala Lumpur* v. *Bukit Jalil Estates Sdn. Bhd.*[1]). The legal issues involved in the two appeals are precisely the same except that in this appeal it is further contended by the respondent company that the appellant was wrong in taking all the lots together and valuing them jointly. In the case of *Datuk Bandar, Kuala Lumpur* v. *Bukit Jalil Estates Sdn. Bhd.*,[1] we have stated the correct meaning of the word "occupy", and we have also shown that the words "partially built upon" and "not built upon" in the proviso (c) do not apply to agricultural land. Accordingly, we hold that every one of the lots comprising the Hawthornden Rubber Estate is

fully occupied since it is an agricultural land planted with rubber and used by the respondent company for rubber tapping with exclusive possession. As such, it is not a vacant land. Even if all the lots are taken together and considered jointly as an estate, this would not change the position. Still the whole estate is a fully occupied estate and not vacant. Therefore the proviso (c)(i) does not apply, and the rates should be fixed on the basis of the estimated annual rent in accordance with the definition of "annual value".

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Shook Lin & Bok; Shearn Delamore & Co.*

LESCO DEVELOPMENT CORP. SDN. BHD. v. MALAYSIA BUILDING SOCIETY BHD.

[S.C. (Wan Suleiman, Hashim Yeop A. Sani & Wan Hamzah S.C.JJ.) 1 April & 9 September 1987]

[Kuala Lumpur – Supreme Court Civil Appeal No. 417 of 1986]

Civil Procedure – Order of sale made in foreclosure proceedings – Appeal against – Default judgment given in another court in claim against borrower and guarantors on loan – Land charged to secure loan.

The appellant had charged its land to the respondent to secure a loan of $5m. There was a document of guarantee signed by the guarantors. The respondent claimed the sum owing and unpaid from the appellant and the guarantors. The respondent also initiated foreclosure proceedings in respect of the charge. The respondent obtained judgment in default of appearance in its suit for the recovery of the loan but the appellants applied to have this set aside. The application was still pending. The respondent's application for foreclosure was heard in another court and an order of sale was granted. The appellant appealed against the order of sale.

Held: (1) it is undesirable to allow a situation where two different courts would try and determine the same issues arising between the same parties relating to the same subject matter;

(2) in this case the hearing of the foreclosure proceedings should have been postponed until the final disposal of the claim on the debt;

(3) the order of sale should be set aside and the hearing of the foreclosure application be dealt after final disposal of the claim on the debt.

SUPREME COURT.

G. Krishnan for the appellant.

Miss Grace Lim for the respondent.

Cur. Adv. Vult.

Wan Hamzah S.C.J. (delivering the judgment of the court): In December 1981 the appellant, Lesco Development Corporation Sdn. Bhd. (hereinafter referred to as Lesco), charged its land to the respondent, Malaysia Building Society Bhd. (hereinafter referred to as MBS), on the terms and conditions contained in an agreement attached to the document of charge as an annexure to secure a loan of $5,000,000 which MBS had agreed to grant to Lesco. A document dated November 30, 1981 which was purported to be a document of guarantee in respect of the loan was signed by five persons (hereinafter referred to as the guarantors).

On December 13, 1985, MBS filed a suit in the Commercial Division of the High Court at Kuala Lumpur (Civil Suit C8369/1985) against Lesco and the five guarantors, in which it is alleged that Lesco owed MBS a sum of $4,688,863.70 as at October 31, 1985, in breach of the terms and conditions of the charge. MBS claims that sum from Lesco and the guarantors. A few days later, *i.e.* on December 17, 1985, MBS filed in the Family and Property Division of the High Court at Kuala Lumpur an originating summons (Originating Summons F2652/1985) to initiate foreclosure proceedings against Lesco in respect of the same charge.

On January 31, 1986, MBS obtained judgment in default of appearance against Lesco in Civil Suit C8369/1985. On April 15, 1986, Lesco filed summons-in-chambers asking for an order to set aside the default judgment and took steps to show that it has a good defence. In this regard it is alleged by Lesco, *inter alia*, as follows:

(a) MBS had breached the agreement (particulars of the breach are stated).

(b) By letter dated July 13, 1985, MBS had terminated the agreement.

(c) MBS has not released the loan of $5,000,000 in full, and under the terms of the agreement MBS can recover the loan only after it has released the loan in full.

(d) MBS's claim for compound interest is in contravention of section 11 of the Civil Law Act.

The application to set aside the default judgment is still pending in the Commercial Division. In opposing the foreclosure proceedings Lesco raised the